

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 NATIONAL OILWELL VARCO, LP,)
5)
6 Plaintiff/Counter-Defendant,)
7) NO. H-06-CV-170
8 VS.) June 13, 2011
9)
10 HYDRIL COMPANY, LP,)
11 Defendant/Counter-Claimant.)

12
13 PRETRIAL CONFERENCE
14 BEFORE THE HONORABLE LYNN N. HUGHES
15
16

17 For the Plaintiff/
18 Counter-Defendant: Mr. John Raley
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28 by computer-aided transcription.

1 THE COURT: The lead counsel on this is Andrew L.
2 Jefferson, Jr.?

3 MR. BOWICK: No, sir.

4 THE COURT: Well, it says that. Shouldn't we take
17:27 5 him off?

6 MR. BOWICK: That's fine with me, Your Honor. When
7 he was in the hospital before he died, his office was shut
8 down and we didn't have authority to take him off.

9 THE COURT: In fact, get Dawna to take off all this
17:27 10 information about him and let's just leave his name there.
11 He was a dear friend of mine, one of the finest people and
12 lawyers. The only problem is he liked my wife a lot better
13 than he liked me, but, then, everybody does.

14 And Timothy Johnson?

17:27 15 MR. BOWICK: That was one of the lawyers at my
16 former firm, Your Honor. They're no longer of record. I
17 have asked them to file papers to withdraw as counsel.

18 THE COURT: I will withdraw them.

19 MR. BOWICK: That's fine. I think Guy Matthews
17:28 20 might be on there. He is no longer counsel.

21 THE COURT: Right.

22 MR. BOWICK: It should just be Mr. Raley and
23 myself.

24 THE COURT: Well, those are the only people I have
17:28 25 seen lately.

1 I'm sorry Mr. Jefferson can't be here.

2 (Off-the-record discussion)

3 THE COURT: All right. I think another shot at
4 mediation is a good idea, but Varco doesn't want to do it.
17:30 5 I thought it might help. It might help even if it's
6 reluctant to do it. So, I am thinking about ordering
7 mediation.

8 MR. RALEY: Well, Your Honor, has, as you know,
9 absolute right to order it. My understanding is that there
17:31 10 was a rather extensive attempt at that early in the case,
11 which I understand that fact alone does not preclude any
12 further efforts.

13 But the point we are now -- as Your Honor is
14 aware, we are, originally, the plaintiffs in this case. We
17:31 15 have a good-faith belief that our client's patent has been
16 infringed by Hydril. We have a good-faith belief that
17 Hydril's patent that they're asserting against us is invalid
18 for several reasons. But because of where we are, as far as
19 the Court's rulings, Hydril is now the Plaintiff and they
17:31 20 want to know how much we want to pay them, and that's not a
21 position that's --

22 THE COURT: I think that's what she's always had in
23 mind.

24 MR. RALEY: Right. I have no doubt whatsoever.
17:32 25 So, that's, really, an untenable position for us. We have

1 every confidence going forward with litigation in whatever
2 form. So, I don't think that -- the short answer to your
3 question is, Your Honor, I don't think that a mediation
4 would do any good whatsoever. Of course, if the Court wants
17:32 5 to order it we will attend.

6 THE COURT: Mediation, like any litigation
7 technique, should be applied when circumstances warrant it.
8 The difference is the contours of the case. The first time
9 we did it it was right on at the beginning. Now, that
17:32 10 didn't work. There's been some litigation. The case has
11 evolved.

12 I believe there's been at least one evolution
13 in National's corporate existence, hasn't there? Didn't
14 they acquire somebody since the case has been --

17:33 15 MR. BOWICK: Not since this lawsuit, Your Honor.
16 This lawsuit was filed -- I believe it was filed as National
17 Oil Well Varco. This case was filed in, I think, January of
18 '06. The merger of National Oil Well Varco had occurred in,
19 I believe, March of 2005.

17:33 20 THE COURT: So, anyway --

21 MR. BOWICK: They have acquired several companies
22 since then, but not related to this lawsuit.

23 MR. RALEY: You may be thinking about Hydril and
24 General Electric.

17:33 25 THE COURT: No. I know it's evolved -- mainly,

1 because she told me in a pleading when it happened.

2 MR. RALEY: I am fairly confident that mediation
3 would begin with a demand from Hydril to pay restitution for
4 their infringement of National Oil Well Varco's patent.

17:34 5 And, so, the polarization between the parties is much
6 farther now than it was before.

7 THE COURT: Okay. I successfully -- I didn't
8 mediate it, but I superintended the mediation between McNair
9 and Bud Adams over a failed football game and "far apart"
17:34 10 doesn't begin to describe it. Your clients are just
11 competitors. I'm not sure how you describe it, but they
12 were more than competitors. They had more emotional baggage
13 between them than any three families put together. There
14 was a good deal of animosity. I think that all stems from
17:34 15 the fact that the Astros had the lease from the County.
16 Adams was always the sub-tenant. Anyway, they settled. So,
17 it could work out under the most adverse circumstances.

18 But I think a fresh look is worthwhile,
19 because we're at the point where we all may have to invest a
17:35 20 lot more in the process, and maybe one day or two at a time
21 would be useful. And, so, I'd like to do it here.

22 Does anybody have any objection to Daryl
23 Bristow, retired, of Baker Botts?

24 MR. RALEY: We'd like a chance to check into that,
17:36 25 Your Honor. I mean, sitting here today, I can't --

1 THE COURT: I'm not going to guess how long he's
2 been retired. He's still a lawyer. He's older than I, but
3 he's still a lawyer, and he's doing arbitrations and
4 mediations and things.

17:36 5 MR. BOWICK: My only objection would be that the
6 entire Yetter firm all came out of Baker Botts and used to
7 work for him.

8 THE COURT: No. You would allow Daryl Bristow to
9 try any case no matter how sophisticated as long as it
17:36 10 didn't involve the more technical or intellectual. He
11 didn't have anything to do with patent law. And Yetter has
12 been gone 20 years. Right?

13 MS. HOHENSEE: Maybe 18. But our whole firm is not
14 from Baker Botts.

17:37 15 THE COURT: Are you from Baker Botts?

16 MS. HOHENSEE: I am.

17 MR. BOWICK: They get a tremendous amount of
18 referrals from Baker Botts still to this day.

19 THE COURT: But Bristow is gone and has been
17:37 20 gone --

21 MR. RALEY: There is no sense of arguing, Your
22 Honor. You asked if we had any concerns and we --

23 THE COURT: Ask your friends. Because he's doing
24 all kinds of arbitrations.

17:37 25 MR. RALEY: I know that he is a respected name,

1 Your Honor. I do not deny that.

2 THE COURT: And he is a no-nonsense, no-posturing
3 kind of guy and he will be able to sit down and he's spent
4 his life talking to banking executives that he was
17:37 5 representing. So, he's familiar with talking to
6 businessmen. I know several people who are wonderful
7 humanist mediators. They share feelings. Mr. Bristow
8 listens to what they say. I think he can understand where
9 they're coming from and suggest strategies and options and
17:38 10 things. But he's a sophisticated business lawyer.

11 So, that's my idea. But check on it.

12 MR. RALEY: We'll inquire if he's ever represented
13 Hydril or General Electric and those sorts of things.

14 THE COURT: No. Obviously --

17:38 15 MS. HOHENSEE: And we have no objection.

16 THE COURT: Or National Varco or --

17 MR. RALEY: Sure. So, if you'd just give us a
18 couple of days to look into that, I am sure --

19 THE COURT: We need a sophisticated person who also
17:38 20 happens to be a lawyer who -- I thought about getting a
21 retired executive from some oil business, but that didn't
22 bring -- it got too complicated, because it would have to be
23 not in the oil tool but close enough to it that, you know --
24 So, you're better off just with somebody with common sense
17:39 25 and a lot of experience in business litigation.

1 (Off-the-record discussion)

2 THE COURT: And I am sure there have been personnel
3 changes, but I need an operating person.

4 MR. BOWICK: We'll have to find somebody. The two
17:40 5 gentlemen that came here four or five years ago, they're no
6 longer with the company.

7 MR. RALEY: One with the company that would have
8 the most knowledge and would be the decision-maker is the
9 in-house counsel --

17:41 10 THE COURT: No. He's just that. I don't want
11 human relations and the lawyer or a corporate secretary. I
12 want somebody who makes stuff for them.

13 I had a chemical patent case. And, so, I
14 ordered a mediation and I said give me two high-ranking but
17:41 15 still operating people. Both of them brought 65-year-old
16 plant managers. I had them in here with the lawyers and
17 explained the problem and I put them in the jury room and
18 then I told the lawyers funny stories for about an hour and
19 20 minutes.

17:41 20 They came back. They had settled the deal
21 with the patent lawyers' people and made two other business
22 deals. One of them had -- I don't remember -- it was barges
23 that were going deadhead empty from St. Louis to
24 New Orleans. The other one sent empty barges the other way.
17:42 25 So, they just did a barge-sharing agreement saving them both

1 huge amounts of freight -- and I don't remember what the
2 other deal was -- and wanted to go have lunch. The case was
3 over.

4 MR. RALEY: It'd probably be an engineer on the
17:42 5 design team? Is that what you're thinking?

6 THE COURT: No. I am thinking whoever is in charge
7 of the oil tool division and some engineer who's been doing
8 management.

9 MR. RALEY: We'll look for something like that.

17:42 10 THE COURT: But somebody who, if the oil tool
11 numbers are not right, somebody upstairs yells at him. Not
12 the yeller. Some guy that has got production numbers, got
13 performance numbers, got sales numbers, got applications,
14 the guy who talks to the design people. Because design
17:42 15 engineers want to talk about their baby, their inventions.
16 They're their children and they love them dearly.

17 We need the practical guy, because,
18 ultimately, it's a business decision. But it has to be
19 somebody with -- I would say somebody who would wears boots
17:43 20 daily. Actually, I did want both sides to send somebody who
21 wore boots at work -- and not alligator cowboy boots.

22 MR. RALEY: Steel-toed.

23 THE COURT: That's right. If you don't wear steel-
24 toed boots you're not out paying attention. I don't think
17:43 25 we need to get down there, but somebody who maybe started

1 his career wearing steel-toed.

2 MR. RALEY: Got it.

3 THE COURT: Have you got one of those?

4 MS. HOHENSEE: We do. We have Chuck Chauvier who
17:43 5 participated last time and he is now the president, but he
6 came up all the way from engineer, engineering manager to
7 president of Hydril. I believe he'll be our representative.

8 THE COURT: I'm not saying you have to -- You're
9 welcome to use whoever, but same criteria.

17:44 10 MS. HOHENSEE: Yes, Your Honor.

11 THE COURT: Shall we set our meeting for August
12 after vacations are over and the kids are getting ready to
13 go back to school?

14 MR. BOWICK: Sounds good.

17:44 15 MS. HOHENSEE: Yes.

16 MR. RALEY: Before the Court sends the letter on
17 Mr. Bristow let me say for the record I have heard very good
18 things about his professional reputation. We just need to
19 check -- maybe call his office and ask him if he's
17:44 20 represented Hydril or GE, just check on that and get back --

21 THE COURT: You might get a faster response by
22 e-mailing him than I ask him.

23 MR. RALEY: Whatever the Court prefers.

24 THE COURT: Because I have used him before. Let me
17:44 25 do that because he may just respond to me.

1 And do you want me to check National Varco?
2 Is there another major component?

3 MR. BOWICK: I think that's it, Your Honor.

4 And, Your Honor, just so I can run it by my
17:45 5 client, do we know what the cost is per day for the --

6 MR. RALEY: Is it a one-day mediation we're
7 discussing or --

8 THE COURT: I am going to block two days. I hope
9 for one day, but you can't tell. I mean, I have had three
17:45 10 days that have succeeded and four days that haven't. After
11 four days I get impatient. Actually, I have had a two-day
12 where it didn't work, but they tried.

13 If he told me, do you want me to have Glenda
14 ask him?

17:46 15 MR. BOWICK: If you don't mind, Your Honor. I
16 mean, I have seen some people who are 1,000 a day and some
17 who are 10,000.

18 THE COURT: We need to be careful. And look. If I
19 ever appoint a mediator or an arbitrator or a car hop or
17:46 20 anything and you don't think the fees are right let me know.
21 I don't appoint my enemies, but I don't appoint my friends
22 so they can take advantage of you. The only way I know is
23 if y'all tell me.

24 And I did it. I thought he was an old friend
17:46 25 on a very simple case. I thought he overbilled and I

1 whacked it until he underbilled, because that's not right.

2 All right. Does he let you have vacations?

3 MS. HOHENSEE: Not in August. I don't know about
4 Mr. Yetter.

17:48 5 MR. RALEY: Okay. Your Honor, are you staying the
6 case until the mediation or --

7 THE COURT: Yes. Because, otherwise, when it
8 settles in the first 20 minutes, y'all would have done a lot
9 of wasted work.

17:48 10 All right. Let me get that done and Glenda
11 will forward you whatever they are and let me know as soon
12 as you can.

13

14 COURT REPORTER'S CERTIFICATE

15 I, BRUCE SLAVIN, certify that the foregoing is a
16 correct transcript from the record of proceedings in the
17 above-entitled matter, to the best of my ability.

18

19 s/Bruce Slavin
20 BRUCE SLAVIN, RPR, CM

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